

SENATE BILL 903

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2000 Regular Session
0lr3106
CF 0lr3107

By: **Senators Miller and Bromwell**
Constitutional Requirements Complied with for Introduction in the last 35 Days of
Session
Introduced and read first time: March 17, 2000
Rule 32 suspended
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted with floor amendments
Read second time: April 2, 2000

CHAPTER _____

1 AN ACT concerning

2 **Contracts Between Health Maintenance Organizations and Subscribers or**
3 **Groups of Subscribers - Subrogation Provisions**

4 FOR the purpose of authorizing contracts between health maintenance organizations
5 and subscribers or groups of subscribers to contain certain provisions allowing
6 the health maintenance organization to be subrogated to a cause of action that a
7 subscriber has against another person to a certain extent under certain
8 circumstances; ~~authorizing contracts between health maintenance~~
9 ~~organizations and subscribers to contain certain provisions allowing the health~~
10 ~~maintenance organization to recover payments made to the subscriber under a~~
11 ~~personal injury protection policy to a certain extent; providing that a health~~
12 ~~maintenance organization may not recover medical expenses under a~~
13 ~~subrogation clause from a subscriber who does not recover for medical expenses~~
14 ~~in the cause of action; requiring that a health maintenance organization that~~
15 ~~includes a subrogation provision in its contract use in its rating methodology an~~
16 ~~adjustment that reflects the subrogation and identify in its rate filing with, and~~
17 ~~in an annual report to, the Maryland Insurance Administration all amounts~~
18 ~~recovered through subrogation; providing that this Act does not allow a contract~~
19 ~~to contain a provision allowing a health maintenance organization to recover~~
20 ~~payments made under a personal injury protection policy; providing for the~~
21 ~~applicability of this Act; making provisions of this Act severable; and generally~~
22 ~~relating to contracts between health maintenance organizations and subscribers~~
23 ~~or groups of subscribers.~~

24 BY repealing and reenacting, with amendments,

1 Article - Health - General
 2 Section 19-713(b) and 19-713.1
 3 Annotated Code of Maryland
 4 (1996 Replacement Volume and 1999 Supplement)

5 BY repealing and reenacting, with amendments,

6 Article - Insurance
 7 Section 15-1205(d)
 8 Annotated Code of Maryland
 9 (1997 Volume and 1999 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article - Health - General**

13 19-713.

14 (b) (1) Rates of a health maintenance organization may not be excessive,
 15 inadequate, or unfairly discriminatory in relation to the services offered.

16 (2) A HEALTH MAINTENANCE ORGANIZATION THAT INCLUDES A
 17 SUBROGATION PROVISION IN ITS CONTRACT AS AUTHORIZED UNDER § 19-713.1(D) OF
 18 THIS SUBTITLE SHALL:

19 (I) USE IN ITS RATING METHODOLOGY AN ADJUSTMENT THAT
 20 REFLECTS THE SUBROGATION; AND

21 (II) IDENTIFY IN ITS RATE FILING WITH THE MARYLAND
 22 INSURANCE ADMINISTRATION, AND ANNUALLY IN A FORM APPROVED BY THE
 23 INSURANCE COMMISSIONER, ALL AMOUNTS RECOVERED THROUGH SUBROGATION.

24 19-713.1.

25 (a) A contract between a health maintenance organization and its subscribers
 26 or a group of subscribers may contain nonduplication provisions or provisions to
 27 coordinate the coverage with subscriber contracts of other health maintenance
 28 organizations, health insurance policies, including those of nonprofit health service
 29 plans, and with other established programs under which the subscriber or member
 30 may make a claim.

31 (b) Notwithstanding the provisions of subsection (a) of this section, a contract
 32 between a health maintenance organization and its subscribers or a group of
 33 subscribers may not contain nonduplication provisions or provisions to coordinate
 34 coverage with any individually underwritten and issued, guaranteed renewable,
 35 specified disease policy, as defined in § 15-109 of the Insurance Article, or intensive
 36 care policy, which does not provide benefits on an expense incurred basis.

1 (c) For purposes of this section, "intensive care policy" means a health
2 insurance policy that provides benefits only when treatment is received in that
3 specifically designated facility of a hospital that provides the highest level of care and
4 which is restricted to those patients who are physically, critically ill or injured.

5 ~~(D) A CONTRACT BETWEEN A HEALTH MAINTENANCE ORGANIZATION AND ITS~~
6 ~~SUBSCRIBERS OR A GROUP OF SUBSCRIBERS MAY CONTAIN A PROVISION OR~~
7 ~~PROVISIONS ALLOWING A HEALTH MAINTENANCE ORGANIZATION TO BE~~
8 ~~SUBROGATED TO A CAUSE OF ACTION THAT A SUBSCRIBER HAS AGAINST ANOTHER~~
9 ~~PERSON TO THE EXTENT THAT ANY PAYMENTS MADE BY THE HEALTH~~
10 ~~MAINTENANCE ORGANIZATION OR THE VALUE OF ANY SERVICES PROVIDED BY THE~~
11 ~~HEALTH MAINTENANCE ORGANIZATION RESULT FROM THE OCCURRENCE THAT~~
12 ~~GAVE RISE TO THE CAUSE OF ACTION.~~

13 (D) NOTWITHSTANDING § 19-701(F)(3) OF THIS SUBTITLE, A CONTRACT
14 BETWEEN A HEALTH MAINTENANCE ORGANIZATION AND ITS SUBSCRIBERS OR A
15 GROUP OF SUBSCRIBERS MAY CONTAIN A PROVISION ALLOWING THE HEALTH
16 MAINTENANCE ORGANIZATION TO BE SUBROGATED TO A CAUSE OF ACTION THAT A
17 SUBSCRIBER HAS AGAINST ANOTHER PERSON:

18 (1) TO THE EXTENT THAT ANY ACTUAL PAYMENTS MADE BY THE
19 HEALTH MAINTENANCE ORGANIZATION RESULT FROM THE OCCURRENCE THAT
20 GAVE RISE TO THE CAUSE OF ACTION; OR

21 (2) FOR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION THAT
22 EXCLUSIVELY CONTRACTS WITH A GROUP OF PHYSICIANS TO PROVIDE OR TO
23 ARRANGE FOR THE PROVISION OF HEALTH CARE SERVICES FOR ITS ENROLLEES, FOR
24 ANY SERVICE PROVIDED BY THE HEALTH MAINTENANCE ORGANIZATION AS A
25 RESULT OF THE OCCURRENCE THAT GAVE RISE TO THE CAUSE OF ACTION, PER THE
26 FEE SCHEDULE ESTABLISHED BY THE NONPROFIT HEALTH MAINTENANCE
27 ORGANIZATION.

28 (E) SUBSECTION (D) OF THIS SECTION DOES NOT ALLOW A CONTRACT
29 BETWEEN A HEALTH MAINTENANCE ORGANIZATION AND ITS SUBSCRIBERS OR A
30 GROUP OF SUBSCRIBERS TO CONTAIN A PROVISION ALLOWING THE HEALTH
31 MAINTENANCE ORGANIZATION TO RECOVER ANY PAYMENTS MADE TO A
32 SUBSCRIBER UNDER A PERSONAL INJURY PROTECTION POLICY.

33 (F) SUBSECTION (D) OF THIS SECTION DOES NOT ALLOW A HEALTH
34 MAINTENANCE ORGANIZATION TO RECOVER MEDICAL EXPENSES FROM A
35 SUBSCRIBER UNDER A SUBROGATION PROVISION UNLESS THE SUBSCRIBER
36 RECOVERS FOR MEDICAL EXPENSES IN A CAUSE OF ACTION.

37 ~~(E) A CONTRACT BETWEEN A HEALTH MAINTENANCE ORGANIZATION AND ITS~~
38 ~~SUBSCRIBERS OR A GROUP OF SUBSCRIBERS MAY CONTAIN A PROVISION OR~~
39 ~~PROVISIONS ALLOWING A HEALTH MAINTENANCE ORGANIZATION TO RECOVER ANY~~
40 ~~PAYMENTS MADE TO THE SUBSCRIBER UNDER A PERSONAL INJURY PROTECTION~~
41 ~~POLICY TO THE EXTENT THAT THE PAYMENTS ARE BASED ON SERVICES PROVIDED~~
42 ~~OR PAID FOR BY THE HEALTH MAINTENANCE ORGANIZATION.~~

1

Article - Insurance2 15-1205.

3 (d) (1) A carrier shall base its rating methods and practices on commonly
4 accepted actuarial assumptions and sound actuarial principles.

5 (2) A CARRIER THAT IS A HEALTH MAINTENANCE ORGANIZATION AND
6 THAT INCLUDES A SUBROGATION PROVISION IN ITS CONTRACT AS AUTHORIZED
7 UNDER § 19-713.1(D) OF THE HEALTH - GENERAL ARTICLE SHALL:

8 (I) USE IN ITS RATING METHODOLOGY AN ADJUSTMENT THAT
9 REFLECTS THE SUBROGATION; AND

10 (II) IDENTIFY IN ITS RATE FILING WITH THE ADMINISTRATION,
11 AND ANNUALLY IN A FORM APPROVED BY THE COMMISSIONER, ALL AMOUNTS
12 RECOVERED THROUGH SUBROGATION.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
14 any case pending or filed on or after the effective date of this Act, but may not be
15 applied to any case for which a final judgment has been rendered and for which
16 appeals have been exhausted prior to the effective date of this Act, or to any matter in
17 which a final written liability insurance settlement has been reached and payment
18 made between a liability insurer and a claimant.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to all
20 subrogation recoveries by health maintenance organizations recovered on or after
21 ~~March 10, 1997~~ January 1, 1976.

22 SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this
23 Act or the application thereof to any person or circumstance is held invalid for any
24 reason in a court of competent jurisdiction, the invalidity does not affect other
25 provisions or any other application of this Act which can be given effect without the
26 invalid provision or application, and for this purpose the provisions of this Act are
27 declared severable.

28 SECTION 4. 5. AND BE IT FURTHER ENACTED, That this Act shall take
29 effect June 1, 2000.